

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

§

§

VS.

§

§

ELIZABETH-ANNE ROHR

§

CASE NO. 4:05cr246
APPEAL NO. 06-40724

MEMORANDUM OPINION AND ORDER

On March 31, 2006, this court entered an order of criminal contempt against Defendant Elizabeth-Anne Rohr. Rohr submitted an undated *pro se* notice of appeal that is stamped as filed on April 27, 2006. The final day for filing a timely notice of appeal was April 14, 2006.

Rule 4(b)(1) of the Federal Rules of Appellate Procedure affords a criminal defendant ten (10) days in which to file a notice of appeal. Pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure, a district court may grant an additional thirty (30) days in which to file a notice of appeal upon a finding of excusable neglect or good cause. Since Rohr filed her notice of appeal within the additional thirty (30) day period, the Fifth Circuit remanded the case to this court on June 6, 2006 for a determination of whether the untimely filing of the notice of appeal was due to excusable neglect or good cause. This court subsequently entered an order on June 23, 2006, directing Rohr to file an affidavit with the court by July 14, 2006, explaining whether the untimely filing of her notice of appeal was due to excusable neglect or good cause.

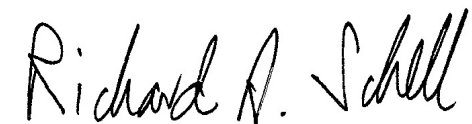
The court's June 23, 2006 order was mailed to the Denton County Jail; however, the order was refused by the jail because Rohr was no longer being housed at the Denton County Jail. The court subsequently issued an order on July 24, 2006, directing the Clerk of the Court to send a copy of the July 24, 2006 order, as well as a copy of the court's June 23, 2006 order, to Rohr once the

Clerk could determine where Rohr was being housed. The Clerk of the Court eventually located Rohr at the Dawson State Jail where she was subsequently served with copies of the court's orders. The Clerk of the Court was advised by officials at the Dawson State Jail that Rohr received the orders of the court on August 28, 2006.

In the court's July 24, 2006 order, the court ordered Rohr to file an affidavit with the court within two (2) weeks after receiving the court's prior orders, explaining whether the untimely filing of her notice of appeal was due to excusable neglect or good cause. Although more than two weeks have passed since Rohr received the orders of this court, Rohr has failed to file an affidavit with the court as ordered. Rohr, therefore, has not offered any explanation as to whether the untimely filing of her notice of appeal was due to excusable neglect or good cause. In light of the foregoing, the court finds that Rohr's untimely filing of her notice of appeal was not due to excusable neglect or good cause.

The Clerk is **ORDERED** to forward a copy of this memorandum to the Court of Appeals and to the parties in this lawsuit.

SIGNED this the 28th day of September, 2006.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The last name "Schell" is written with a large, prominent "S".

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE